

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Application by SBC for Authorization
under Section 271 of the Communications
Act to Provide In-Region, InterLATA
Services in the State of Nevada

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WC Docket No. 03-10

**COMMENTS OF WORLDCOM, INC. ON THE
APPLICATION BY SBC FOR AUTHORIZATION TO
PROVIDE IN-REGION, INTERLATA SERVICES IN NEVADA**

Marc A. Goldman
JENNER & BLOCK, LLC
601 Thirteenth Street, NW
Washington, DC 20005

(202) 639-6000

Keith L. Seat
WORLDCOM, INC.
1133 Nineteenth Street, NW
Washington, DC 20036

(202) 887-2993

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INTRODUCTION AND EXECUTIVE SUMMARY

SBC's section 271 application for Nevada should be denied because SBC fails to satisfy the threshold requirements of "Track A" by demonstrating the existence of an actual competitive alternative to SBC for residential subscribers. In an unprincipled attempt to meet the Track A requirements, SBC makes claims about residential competition in Nevada that are untrue according to the companies on which SBC relies. Moreover, SBC only provides the identities of these companies in its confidential filing. SBC may be trying to hide the truth by filing confidentially, but even if it is not, the very fact that the identities of these companies are not publicly available shows that these companies do not provide a viable option for consumers in Nevada.

Track A is not a mere technicality, but an important and integral part of the statute which ensures that local competition for both residential and business customers has a foundation before a BOC is permitted to provide in-region long distance service. In Nevada that foundation does not yet exist for residential customers. Although this may change later this Spring because WorldCom hopes to launch local residential UNE-P service in Nevada, SBC cannot meet the requirements of Track A today.

SBC expresses concern about the slowness at which local competition is developing in the state. But that pace has resulted largely from SBC's high UNE rates. When cost differentials between the states are taken into account, loop rates in Nevada exceed those in California by 19 percent, while "non-loop" rates in Nevada exceed those in California by a shocking 95 percent.

SBC's application should be denied or withdrawn and refiled when SBC can legitimately satisfy Track A and when its UNE rates have been reduced.

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FCC ORDERS	
<u>Louisiana I Order</u>	<u>In re Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 97-231, Memorandum Opinion and Order, 13 F.C.C.R. 6245, FCC 98-17 (1998).
<u>Louisiana II Order</u>	<u>In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana</u> , CC Docket No. 98-121, Memorandum Opinion and Order, 13 F.C.C.R. 20599, FCC 98-271 (1998).
<u>Michigan Order</u>	<u>In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan</u> , CC Docket No. 97-137, Memorandum Opinion and Order, 12 F.C.C.R. 20543, FCC 97-298 (1997).
<u>Oklahoma Order</u>	<u>In re Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-region, InterLATA Services in Oklahoma</u> , CC Docket No. 97-121, Memorandum Opinion and Order, 12 F.C.C.R. 8685, FCC 97-228 (1997).
<u>Pennsylvania Order</u>	<u>In re Application of Verizon Pennsylvania, Inc. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-region, InterLATA Services in Pennsylvania</u> , CC Docket No. 01-138, Memorandum Opinion and Order, 16 F.C.C.R. 17419, FCC 01-269 (2001).
<u>Vermont Order</u>	<u>In re Application by Verizon New England Inc., for Authorization to Provide In-Region, InterLATA Services in Vermont</u> , CC Docket No. 02-7, Memorandum Opinion and Order, 17 F.C.C.R. 7625, FCC 02-118 (2002), <u>appeal dismissed</u> , AT&T Corp. v. FCC, No. 02-1152, 2002 WL 31619058 (D.C. Cir. Nov. 19, 2002)
DECLARATIONS AND AFFIDAVITS	
J.G. Smith	Declaration of J. Gary Smith on Behalf of SBC Communications (SBC Appl. App. A, Tab 19)

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**COMMENTS OF WORLDCOM, INC. ON THE
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SBC's section 271 application should be denied because it fails to meet the requirements of Track A and because its UNE rates are far too high.¹

I. SBC FAILS THE THRESHOLD REQUIREMENTS OF TRACK A

The Commission has explained that in enacting Track A, Congress intended "to provide an incentive for BOCs to cooperate in the development of local competition."² To meet Track A, a BOC must prove that it is providing access and interconnection to one or more competing carriers who provide telephone exchange service to "residential and business subscribers" at least predominantly over their own facilities, and that at least one competing provider constitutes an actual commercial alternative to the BOC.³ The existence of such facilities-based competitors "is the integral requirement of the checklist, in that it is the tangible affirmation that the local exchange is indeed open to

¹ See 47 U.S.C. § 271(d)(3)(A). SBC does not assert that it is eligible to proceed under Track B of section 271. 47 U.S.C. § 271(c)(1)(B).

² Oklahoma Order ¶ 52; id. ¶ 46.

³ 47 U.S.C. § 271(c)(1)(A); Vermont Order ¶10.

competition.”⁴ But SBC cannot meet Track A because it cannot show that any competitor that provides service predominantly over its own facilities, provides service to residential subscribers.

SBC first attempts to satisfy Track A by asserting that one wireline CLEC in Nevada provides an “actual commercial alternative” to SBC’s residential service by providing residential service over its own facilities (via UNE-P). SBC Br. at 8-9. But SBC keeps the identity of this carrier confidential. SBC fails to explain how this CLEC could be an actual commercial alternative to SBC when its identity is not publicly available. In fact, it is clear that the CLEC is not a commercial alternative to SBC. Even though SBC argues in its Brief that this CLEC satisfies Track A, SBC’s supporting affidavit notes that this CLEC only has a total of “approximately 28” lines – hardly a commercial alternative. J.G. Smith Aff. ¶ 12. Worse, however, is the fact that when contacted about local residential service in Nevada, both a sales representative and manager of this CLEC unambiguously asserted that the company does not offer any local service in Nevada. Whether or not SBC made an honest mistake in suggesting otherwise, this CLEC clearly does not satisfy Track A.

SBC then points to a second CLEC that it claims offers residential service, but SBC does not claim that this CLEC offers residential service over its own facilities. Rather SBC claims that the CLEC offers residential resale in connection with facilities-based business service. SBC Br. at 9. But again SBC keeps the identity of this CLEC confidential, and a CLEC cannot be a commercial alternative if its identity is not publicly known or available. Moreover, SBC’s assertion that this CLEC provides any residential

⁴ H.R. Rep. No. 104-204, pt. 1, at 76-77 (1995) (emphasis added), quoted in Oklahoma Order ¶ 42.

service is again untrue according to the CLEC. The CLEC's personnel plainly state to anyone who asks that the company does not offer residential service in Nevada.⁵

SBC next argues that the law should be stretched to permit Track A to be satisfied by pure residential resellers who do not offer any facilities-based service to anyone. SBC Br. at 9-10. But this interpretation is plainly inconsistent with the statute. The statute requires that one or more providers offer service to business and residential customers and that "such" service be offered predominantly over the facilities of those providers. Thus, the statute plainly demands that the service provided to residential customers be offered predominantly over the facilities of the competing provider or providers. While there may be ambiguity as to whether this standard can be satisfied by a facilities-based provider of business services that resells lines to residential subscribers, there is no ambiguity with respect to a pure reseller. Such a reseller does not satisfy the statutory criteria.

The Commission has previously indicated in dicta that Track A perhaps could be satisfied by a CLEC that provided residential service only via resale, but it has never said that this is so when the CLEC does not even provide business service via its own facilities. Indeed, even the BOCs do not appear to have suggested this much previously. See Louisiana II Order ¶ 47 n. 131 (explaining that BellSouth and Bell Atlantic both argued that Track A could be satisfied if there was a competing provider that was predominantly facilities-based but served residential customers only through resale).

⁵ SBC notes that "white pages listings appear to confirm" service to residential customers, SBC Br. at 9, n.4, but the CLEC explains to inquirers that it is willing to sell its business service (two lines plus data service or more) to anyone willing to buy them, but does not offer residential service. This would explain the appearance of some listings of this CLEC's customers in the white pages.

Moreover, it is late in the section 271 process to be seeking new standards. The current standards have been sufficient to permit section 271 authorization of states all across the country, including the most rural states in the union. SBC simply needs to make conditions in Nevada more hospitable for local competition by bringing its UNE rates into line and by cooperating with CLECs such as WorldCom who are attempting to enter the local residential market.

In any case, the modest number of lines sold by pure resellers does not show the existence of an actual competitive alternative to SBC, as required. While the Commission has held that Track A can be satisfied so long as a facilities-based provider serves more than a de minimis number of lines, it should not extend this conclusion to resellers, even if it concludes that pure resellers can sometimes satisfy Track A. Because resellers are not the focus of Track A, the Commission should require greater evidence for resellers than for facilities-based providers that they present a real commercial alternative to the BOC – especially since, unlike in the early days after passage of the Act, there is no reason to conclude that a small number of customers is a portend of much greater competition to come.

Here, the pure resellers clearly do not present an actual commercial alternative to SBC. SBC claims there are 1,300 resold residential lines in Nevada, but some of the companies listed do not appear to sell any residential service (based on their web sites), and some offer only pre-paid service targeted to a niche market consisting of customers who have been disconnected by SBC for failure to pay or otherwise cannot qualify for service with SBC. These pre-paid service offerings do not constitute a genuine commercial alternative to SBC, because customers who have been disconnected for

failure to pay cannot be reasonably said to have a choice of competing providers. As for the other companies listed, the local service offerings themselves are not comparable to SBC's, for they generally charge significant "one-time activation fees" and offer local service at rates as much as four times that of SBC. For example, the local service of one reseller that SBC only identifies in its confidential materials includes a one-time activation fee of \$40.00 and monthly service charge of \$41.99, compared to SBC's local service, which includes a \$33.50 one-time set-up charge and \$10.83 monthly rate in Nevada.⁶ Monthly rates that are four times as high as SBC's do not constitute an actual commercial alternative.

As a further fallback to its untenable Track A position, SBC next claims that a wireless carrier, Cricket Communications, is providing a sufficient substitute for local wireline service to be considered a commercial alternative. This Commission has held that BOC applicants may rely on the presence of a PCS provider to satisfy Track A only if the PCS provider competes with the applicant's telephone exchange service and the PCS customers are using the service "to replace wireline service, not as a supplement to wire."⁷ SBC attempts to prove this by relying on the press releases and other advocacy materials of Cricket and its parent. In particular, SBC relies on the results of a poll of Cricket customers summarized in a few lines in a company press release, without any backup information about how the poll was taken, how the respondents were chosen, what questions were asked and how valid the responses were.⁸ The unsubstantiated

⁶ See <https://www03.sbc.com/NewConnect/FNT/1,,00.html?next=1&pageid=1>.

⁷ Louisiana II Order ¶ 31; Louisiana I Order ¶ 73.

⁸ See J.G. Smith Aff. ¶ 18. In New Mexico, by contrast, much attention was recently given by the state commission to efforts by the section 271 applicant to demonstrate substitution of wireline service with Cricket wireless service. After reviewing the many

Cricket poll should not be relied on to show that Cricket PCS customers are substituting their wireline service with wireless service. This is especially so because the future of Cricket is somewhat uncertain. SBC fails to note that Cricket's corporate parent, Leap Wireless International, was delisted by NASDAQ effective December 11, 2002.⁹

SBC also does not explain whether or how Cricket's wireless service addresses various technical limitations. PCS providers do not offer service that allows the use of more than one PCS handset with each PCS subscription and telephone number. A customer who wished to use PCS as a substitute for wireline service thus would be unable to have more than one phone without subscribing and paying for two separate plans, each with substantial monthly payments, and each with a different number. For example, a customer could not even have one phone on the lower floor of a house and one or more phones on the upper floor without paying for a separate plan for each phone. And if one family member took the PCS phone in the car or otherwise outside the house, the household would not have any phone remaining on the premises unless it paid a double rate – and even then the phone number of the two handsets would be different. Moreover, households wishing to use data services such as accessing the Internet may suffer lower transmission speeds compared to wireline service, not to mention that they would have to purchase an additional PCS handset and pricing plan to avoid connecting their only handset to a modem each time a data service was accessed. At the same time, Cricket local customers have to pay fully three times as much each month for basic

weaknesses of polls of Cricket customers, the New Mexico Commission concluded that the evidence was not of sufficient quality to conclude that Track A was satisfied. Final Order, In re Qwest Corp.'s Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process, Utility Case No. 3269, ¶ 154 (N.M. Pub. Reg. Comm'n Oct. 8, 2002).

⁹ See Leap Wireless Press Release dated Dec. 11, 2002, <http://www.leapwireless.com/dindex.html>.

service as do SBC local customers.¹⁰ As a result, Cricket is not a “competing provider” within the meaning of section 271.

While WorldCom hopes to be able to enter the local residential market in Nevada in the Spring, that future intention cannot provide a basis for Track A authorization now. As this Commission has repeatedly emphasized, a BOC’s section 271 application must be complete when filed, and future possibilities are entitled to no weight.¹¹ The Commission’s limited exception to this rule applies only where “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹² Such circumstances are not presented here. SBC is fully aware of what is required under Track A, and knowingly decided when to file for section 271 authority. SBC chose to file for section 271 authority on January 14, 2003 by relying on untrue claims that one CLEC is a UNE-P provider of residential services in Nevada and another CLEC offers facilities-based service for business and residential resale, when a single phone call to each CLEC would have been sufficient to determine that this is not accurate.¹³ Customers calling to find these supposed alternatives to SBC’s local service are told that neither exists.

¹⁰ See <http://www.cricketcommunications.com/service.asp>; J.G. Smith Aff., Ex. E, showing Cricket service at \$32.99 per month for unlimited local, compared to \$10.83 per month for SBC unlimited local service. See n.6, *supra*.

¹¹ See Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act, DA 01-734, 17 F.C.C.R. 19056, at 3-4 (2001). See, e.g., Michigan Order ¶¶ 50, 55.

¹² Pennsylvania Order ¶ 98, citing Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

¹³ These errors do not appear simply to be coincidences or accidents, for SBC made the very same type of misstatements in its state case, erroneously claiming that WorldCom and another carrier provided local residential service in Nevada. See Reply Brief of WorldCom, Inc., In re Petition for Review and Approval of Draft Application By SBC Communications for Provision of In-region InterLATA Services in Nevada, Docket No. 00-7031, at 10 (Nev. Pub. Util. Comm’n filed Nov. 5, 2002).

II. NEVADA UNE RATES FAR EXCEED CALIFORNIA BENCHMARK

It is no surprise that facilities-based residential competition has not taken hold in Nevada yet, for reasons that cannot be blamed on CLECs or inhospitable conditions. Quite simply, SBC's UNE rates are too high. A comparison with SBC's loop and non-loop rates in the adjacent state of California reveals a dramatic difference, even after adjusting for cost differences between the two states. As Table 1 below shows, the Nevada loop rate exceeds the cost-adjusted loop rate in California by 19 percent.¹⁴ Similarly, non-loop rates in Nevada are 95 percent higher than cost-adjusted rates in California.

Table 1

	CA	NV	Benchmark	NV Rate Exceeds Benchmark by:
SM Cost				
Loop	10.75	17.97		
Non-Loop	5.14	6.82		
UNE Rates				
Loop	9.93	19.83	16.60	19%
Non-Loop	4.98	12.87	6.61	95%

$$\text{Benchmark} = \text{CA rate} * (\text{NV SM Cost} / \text{CA SM Cost})$$

With rates this high in Nevada, it is no wonder that local competition in the state is having a hard time. SBC should reduce its UNE rates substantially and the effect on local competition will be notable.

¹⁴ Consistent with Commission action in prior section 271 applications, the costs in these comparisons are determined from the Synthesis Model results adjusted to apportion overheads among all the rate elements. Also consistent with Commission practice when the Bell company does not provide usage data, the demand levels assumed to compute the monthly rates are 1200 originating and terminating local minutes, and state-specific long distance minutes as determined from WorldCom's customer usage.

CONCLUSION

For the foregoing reasons, SBC's application to provide in-region interLATA services in Nevada should be denied.

Respectfully Submitted,

Marc Goldman
JENNER & BLOCK, LLC
601 Thirteenth Street, NW
Washington, DC 20005

(202) 639-6000

/s/ Keith L. Seat
Keith L. Seat
WORLD COM, INC.
1133 Nineteenth Street, NW
Washington, DC 20036

(202) 887-2993

February 4, 2003

Certificate of Service

I, Marc A. Goldman, do hereby certify, that on this 4th day of February, 2003, I have electronically served a true and correct copy of WorldCom, Inc.'s Comments in WC Docket No. 03-10 on the following:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Janice Myles
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554
jmyles@fcc.gov

Tracey L. Wilson
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554
twilson@fcc.gov

Pamela Arluk
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554
parluk@fcc.gov

Charles Bolle
Nevada Public Utilities Commission
1150 East William Street
Carson City, NV 89701-1309
cbolle@puc.state.nv.us

/s/ Marc Goldman

Susan Wittenberg
U. S. Department of Justice
Antitrust Division
Telecommunications and Media
Enforcement
1401 H Street, NW, Suite 8000
Washington, DC 20530
susan.wittenberg@usdoj.gov

Brianne Kucerik
U. S. Department of Justice
Antitrust Division
Telecommunications and Media
Enforcement
1401 H Street, NW, Suite 8000
Washington, DC 20530
brianne.kucerik@usdoj.gov

Michael K. Kellogg
Colin S. Stretch
Kellogg, Huber, Hansen, Todd & Evans
1615 M Street, NW
Suite 400
Washington, DC 20036-3209

Kevin Walker
Kellogg, Huber, Hansen, Todd & Evans
1615 M Street, NW
Suite 400
Washington, DC 20036-3209
kwalker@khhte.com

Qualex International
Portals II
445 Twelfth Street, SW
Room CY-B402
Washington, DC 20554
qualexint@aol.com